In The High Court of Uttaranchal At Nainital
Criminal Misc. Transfer Application No. 64/2001

Smt. Madhuri Roy and another .....Applicants

Versus

State of U.P. and another .....Opp. Parties.

And

Criminal Misc. Application No. 273 / 2003

Raj Kumar Rai and two other .....Applicants.

Vs.

State of Uttaranchal and another ....Opp. Parties.

Sri Lokendra Dobhal, Advocate for the applicants.
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

The criminal misc. transfer application has been transferred from the Allahabad High Court. After the receipt of the file, notices were issued to the respondent No. 2, Hem Lata. The report of the process server is available on the record which indicates that there is sufficient service on O.P. No. 2.

2- None has appeared on behalf of the O.P. No. 2 in-spite of sufficient service. Therefore, I have heard learned counsel for the petitioners and perused the record.

3- Learned counsel for the petitioners has submitted that the transfer application U/S 407 Cr.P.C. was moved on the ground that there was an apprehension to the life of the petitioners at Haridwar, hence they wanted to get the case transferred to some other place. The transfer application was filed pertaining to the case

U/S 498-A I.P.C. The court in the aforesaid case stayed further proceedings.

4- The O.P. Smt. Hem Lata wife of petitioner Sunil Kumar Rai subsequently moved a divorce petition before the Family Court bearing No. 28/99 Hem Lata Vs. Sunil Kumar Rai, and both the parties entered into compromise in that divorce petition. O.P. Smt. Hem Lata in that divorce petition. appeared before the Court as P.W. 1 and stated in her deposition that she lodged a report against her husband pertaining to the case U/S 498-A I.P.C. She has also stated that a case U/S 125 Cr.P.C. has also been filed by her against her husband, but both the parties have entered into compromise in all the cases and no dispute is now left between the parties.

5- The petitioner, who had earlier filed the transfer application, subsequently filed an application U/S 482 Cr.P.C. fro quashing the criminal case No. 786 /1997 U/S 498-A I.P.C. and ¾ Dowry Prohibition Act in the light of the compromise arrived at between the parties. On this petition the notices were issued to the opposite party Smt. Hemlata, who is wife of Sunil Kumar Rai.

6- I have perused the statement of Smt. Hemlata which was recorded before the court of Civil Judge (S.D.) Roorkee in case No. 28/1999, Smt. Hemlata Vs. Sunil Kumar Rai. Smt. Hemlata has stated in her statement, which is contained as Annexure- 4 to the petition U/S 482 Cr.P.C. , that now there is no possibility of any amicable solution, hence, she and her husband are not in a position to live together, therefore both have decided to live separately. Hence

the suit for divorce be decreed in terms of compromise arrived at between the parties.

7- The record further reveals that on the basis of statement of Hemlata the Civil Judge (S.D.) Roorkee, decreed the divorce suit vide judgment and order dated 6-8-2000. The Civil Judge (S.D.) Roorkee while decreeing the suit has also recorded a finding with regard to the compromise arrived at between the parties.

8- Keeping in view the aforesaid circumstances. I am of the view that the proceedings in criminal case No. 786/1997 U/S 498-A I.P.C. and Section ¾ D.P. Act State Vs. Sunil Kumar Rai and others are liable to be quashed.

9- The Hon'ble Supreme Court in a case B.S. Joshi and others Vs. State of Haryana and another reported in 2003 S.C.C. (Cri.) Volume- I page 848 has held that 'if there is a settlement of matrimonial dispute between the parties, then for the purpose of securing the ends of justice, quashing of F.I.R. becomes necessary and Section 320 Cr.P.C. would be no bar to the exercise of power of quashing the proceedings.'

10- The Hon'ble Apex Court further in the case of Ruchi Agarwal Versus Amit Kumar reported in 2005(3) S.C.C. page 299 has held that ' in case if the parties have settled their matrimonial dispute, then it would be an abuse of process of court if the criminal proceedings are allowed to continue.'

11- In view of the circumstances narrated above, I am of the considered view that in order to do complete justice, the further proceedings in criminal case No. 786/1997 State Vs. Sunil Kumar Rai and others U/S 498-A I.P.C. and Section ¾ D.P.Act, should be quashed.

12- The petitioner U/S 482 Cr.P.C. is accordingly allowed and the proceedings in criminal case No. 786/1997 State Vs. Sunil Kumar Rai and others U/S 498-A I.P.C. and Section ¾ D.P.Act are hereby quashed.

13- Consequently the application U/S 407 Cr.P.C. which is for the transfer of the case becomes infructuous and is hereby dismissed.

(B.C. Kandpal, J.)

Dated: 04-07-2006
ISB